

Message Text

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FM SECSTATE WASHDC
TO AMEMBASSY TEL AVIV

C O N F I D E N T I A L STATE 169104

E.O. 11652: GDS

TAGS:CARR, IS (ESMAIL, SAMI)

SUBJECT: W/W: ARREST - SAMI ESMail

1. FOLLOWING IS A LIST OF QUESTIONS THAT HAVE GROWN OUT OF
CORRESPONDENCE WITH THE HILL AND THE PUBLIC AS WELL AS OUT
OF REFLECTION WITHIN THE DEPARTMENT. WOULD APPRECIATE YOUR
COMMENTS.

- CAN HE APPEAL THE CONVICTION? WILL HE?
- ARE THERE ANY FORMAL CLEMENCY OR COMMUTATION PROCEEDINGS
AVAILABLE TO HIM?
- WHENEVER HE IS RELEASED, WILL HE AUTOMATICALLY BE DEPORT-
ED? IS DEPORTATION A JUDGEMENTAL MATTER BASED ON FACTORS
OTHER THAN THE FACT OF HIS CONVICTION?
- WHETHER OR NOT HE IS DEPORTED, UNDER WHAT CIRCUMSTANCES
WOULD HE BE PERMITTED TO RETURN TO ISRAEL (FOR INSTANCE,
TO VISIT RELATIVES IN RAMALLAH, SHOULD HE SO DESIRE)?
- WHAT WEIGHT DO YOU ASSIGN TO PRISON DIRECTOR GERSHONI'S

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OBSERVATION THAT FOREIGN SECURITY PRISONERS ARE USUALLY
RELEASED AFTER SERVING TWO-THIRDS OF THEIR SENTENCES? IN
SECURITY CASES, IS SUCH A DECISION ON EARLY RELEASE MADE BY
THE PRISON PROBATION BOARD ALONE, OR IS THE DECISION MADE
AT A HIGHER LEVEL? ON WHAT FACTORS BESIDE GOOD BEHAVIOR
IS THE DECISION BASED?

2. L CONTINUES TO EXPLORE THIS CASE, AND NOW BELIEVES THAT WHILE ISRAEL'S ASSERTION OF JURISDICTION IN THE CASE PROBABLY DID NOT EXCEED INTERNATIONALLY RECOGNIZED LIMITS, IT MAY RAISE ISSUES OF FAIRNESS AND COMITY. IF ESMail WAS CONVICTED AND SENTENCED ESSENTIALLY ON THE BASIS OF HIS JOINING AND PARTICIPATING IN THE ACTIVITIES OF THE PFLP WHILE A STUDENT AT MICHIGAN STATE, THEN HE MAY BE BEING PUNISHED FOR AN ACTIVITY (MEMBERSHIP IN AN ORGANIZATION) CONSTITUTIONALLY GUARANTEED (FREEDOM OF ASSOCIATION, FREEDOM OF SPEECH) IN THE JURISDICTION (THE U.S.) IN WHICH HE ENGAGED IN IT. FOR HIM TO BE PUNISHED BY ISRAEL FOR CONDUCT IN THE U.S. CONSTITUTIONALLY PROTECTED HERE WOULD BE FUNDAMENTALLY UNFAIR. IT WOULD ALSO INTRUDE INTO AN AREA OF HIGH U.S. INTEREST, IN WHICH ISRAEL ARGUABLY SHOULD EXERCISE RESTRAINT IN THE INTEREST OF COMITY. ON THE OTHER HAND, THE COURT TOOK IT AS PROVEN THAT ESMail TRAVELED TO LIBYA AT PFLP EXPENSE AND UNDERWENT HOSTILE MILITARY TRAINING THERE AND IF THIS EVIDENCE WAS ADEQUATE TO SUPPORT CONVICTING ESMail ON THE CHARGE OF MEMBERSHIP, THEN IT WILL BE DIFFICULT TO DEMONSTRATE THAT THE ISRAELIS VIOLATED THIS MATTER OF COMITY.

3. THE COURT'S OPINION ON THE CONVICTION (AS OPPOSED TO THE STATEMENT AT THE TIME OF SENTENCING PASSED IN TEL AVIV 7425) SHOULD PROVIDE ANSWERS TO THESE QUESTIONS WHICH MUST BE RESOLVED BEFORE WE CAN CONSIDER TAKING ANY FORMAL CONFIDENTIAL

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POSITION WITH THE ISRAELIS. DEPARTMENT WOULD APPRECIATE YOUR OBTAINING AND FORWARDING A COPY ASAP.

4. IN ADDITION, L WOULD LIKE TO KNOW WHETHER THE RECORD SUPPORT ALLEGATION BY ESMail'S ATTORNEY THAT AUTHORITIES TESTIFIED AT TRIAL THAT ESMail NEVER COMPLAINED OF MIS-TREATMENT.

5. IN RESPONDING, YOU WILL WANT TO MAKE USE OF MICHAEL PEAY, AN ATTORNEY IN L/NEA WHO WILL BE IN TEL AVIV FOR ORIENTATION JULY 3 THROUGH JULY 5. EMBASSY MAY ALSO BE REQUIRED TO OBTAIN CERTAIN FACTS FROM AUTHORITIES, BUT SINCE DEPARTMENT'S INTEREST AT THIS POINT IS INFORMATIONAL ONLY, YOU SHOULD CHECK WITH DEPARTMENT BEFORE ATTEMPTING ANY SUBSTANTIVE EXCHANGES WITH ISRAELIS. VANCE

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